THE DECALOGUE JOURNAL

*A PUBLICATION OF THE DECALOGUE SOCIETY OF LAWYERS*

Volume 6 SEPTEMBER - OCTOBER, 1955 Number 1

# Justice Benjamin Nathan Cardozo's Philosophy

. . . . Justice Cardozo was one of the few of our judges who, like Justice Holmes, thought it important to have a philosophy. In the forefront of humanity's most cherished heroes, among prophets, saints, philosophers, scientists, poets, artists and inspiring national leaders, the number of lawyers, does not loom large. Mankind as a whole cannot well live by bread alone, but needs sustaining and directing vision. It is hard for lawyers, bent on the affairs of the market place, to look up and see the heavens above, or to grasp entire the scheme of things in which they move. This is especially difficult in a country or epoch which, under the leadership of captains of industry and finance, worships a narrow practicality and acts as if theory could be safely ignored, if not despised. It requires, therefore, a high order of intellectual and moral energy for one who has been immersed almost all his life in the business of the law to avow and pursue an interest in its general backgrounds and ultimate outcome, following the maxim of the old Talmudic sages that he who would deal justly with the law must contemplate the eternal issues of life and death.

The main features of Cardozo's philosophy, like those of any sound philosophy, are essentially simple, though it needs genius and energy to trace their implications and to carry them out consistently.

The first point is that law is not an isolated technique, of interest only to lawyers and to litigants, but that it is an essential part of the process of adjusting human relations in organized society.

The second point is that the law of a growing society cannot all be contained in established precedents or any written documents, important as are continuity with the past and loyalty to the recorded will of the people. In the law as a social process, the judges play a determining role, having the sovereign power of choice in their decisions. It was in this emphasis on the judicial process as selective and creative that Cardozo's thought centered.

The third point, the logical corollary to the foregoing, is that to meet his responsibility for making the law serve human needs the judge cannot rely on legal authorities alone, but must know the actual facts of the life about him, the psychologic and economic factors that determine its manifestations, and must thus keep abreast of the best available knowledge which those engaged in various social studies, researches, or investigations can supply.

From *American Thought*
By *Morris R. Cohen*

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BENJAMIN WEINTROUB, Editor


## IN THIS ISSUE



**The Editor will be glad to receive contributions of articles of modest length, from members of The Decalogue Society of Lawyers only, upon subjects of interest to the profession. Communications should be addressed to the Editor, Benjamin Weintroub, 82 West Washington Street, Chicago 2, Illinois.**

## President Sokol Appoints Committee Chairmen

The hopes of our new president for a year rich with accomplishments rest upon the chairmen of our organization committees, the list of which follows.

In several conferences with the chairmen, Sokol urged the need for the enlistment of the interest of the entire membership in the activities ahead.

**Standing Committees and Chairmen, 1955-1956**

| | |
|---|---|
| Budget and Auditing | Harry D. Cohen |
| Civic Affairs | Richard L. Ritman |
| | Maynard I. Wishner, Vice-Chairman |
| Decalogue Journal | Benjamin Weintroub |
| Diary and Directory | Oscar M. Nudelman |
| | Marvin M. Victor, Vice-Chairman |
| Foundation Fund | Elmer Gertz |
| Forum | Solomon Jesmer |
| | Esther O. Kegan, Vice-Chairman |
| Great Books Course | Oscar M. Nudelman |
| | Alec E. Weinrob, Co-Chairman |
| Harvard-Israeli Law Project | Judge Harry M. Fisher |
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| Membership Retention and Conservation | Harry D. Cohen |
| Placement & Employment | Michael Levin |
| Planning | Morton Schaeffer |
| Scholarship Fund | Judge Samuel B. Epstein |
| | Harry Iseberg, Vice-Chairman |
| Younger Members Orientation | Bernard Weissbourd |

## JUDICIARY COMMITTEE

The plan of the Judiciary Committee, (no formal meeting of the Committee has as yet been held) writes Meyer Weinberg, chairman, "is to coordinate and add the full effectiveness of The Decalogue Society of Lawyers to any movement in the profession and in the community towards the improvement of the courts to the end of efficient justice to litigants." More power to you, Meyer.

# Bernard H. Sokol Inaugurated as New President

The installation ceremonies inducting into office Bernard H. Sokol, the new president of The Decalogue Society of Lawyers were marked by a large attendance of members, their families, and guests. Representatives of the Bench and Bar commented in most flattering terms on the fitness of Sokol for the presidency of our Society as well as the newly elected Decalogue Society officers and members of the Board for their respective posts. Many judges of the various courts in the City, County and State attended this function.

The affair took place at a luncheon at the Covenant Club, June 24, 1955. Judge Harry G. Hershenson of the Superior Court of Cook County was the installing officer. Edward H. Levi, Dean University of Chicago Law School, made the principal address. Past president, Benjamin Weintroub made the presentation of a gift to the retiring president Elmer Gertz. Other officers installed were Morton Schaeffer, First Vice-President, Solomon Jesmer, Second Vice-President, Judge Harry H. Malkin, Treasurer, and Judge Hyman Feldman, Financial Secretary.

## *To Justify Our Existence*

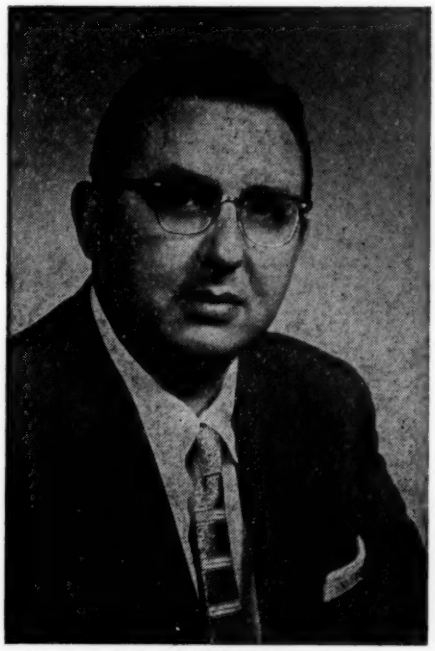
*The remarks of our incoming President at the Installation were extemporaneous. The following represents some of his comments, both modified and expanded for the purpose of publication in the Journal.*

There is something both comforting and stimulating in becoming President of any organization. One can be comforted because one is generally given a tradition of success. If he does no more than follow in the paths of his predecessors, he can generally take some pride in accomplishment. What is stimulating is that each such beginning demands a new dedication, a reiteration of purpose. And a zeal to respond requires analysis of our role.

The appraisal which I have made of our Society and its function, some part of which appears here, may not find agreement among all our members. If some of my remarks should inspire debate and discussion, so much the better.

An important writer in political history has stated that the most remarkable aspect of the Jews is our capacity for survival. One of the reasons for this is that we have traditionally sought political freedom for others as well as ourselves. This is both unselfish and realistic, and furnishes a key to our interest in many disquieting occurrences in the American scene.

Dean Edward H. Levi reminded us at our recent installation ceremonies that we must justify our existence. Since I agree wholeheartedly with the sense and vitality in his challenge, I should like to expand it in terms of a program.



BERNARD H. SOKOL

I believe that we cannot exist merely as a bar association. Locally, our own Chicago Bar Association and the Illinois State Bar Association perform this task admirably. If we have a special competence, if we have a special interest

which can be translated into service, then we must make our contribution in that area or else we shall have no reason to exist.

What form can this contribution take? The answer may be found in considering the present role of the profession generally.

The history of the legal profession demonstrates that those lawyers who have fulfilled themselves, who have lived the "full life," have not done so by the skill or competence with which they have practiced their profession, but to the extent to which their professional skill and competence has been brought to the service of the community. Because of his training, his experience, his erudition, his ability to articulate, and, importantly, his idealism, there has been given to the lawyer leadership in civic, religious, economic, and political groups. In whatever of these areas this responsibility has been given to him, he has found people anxious to listen, hungering for guidance, respectful of the qualifications which he has brought to his task.

We were once identified as champions of the public good and of the dignity and safety of the individual. The colorful painting of our past shows the vigorous, keen intellect on his feet standing before the group, gesturing, arguing, pleading, demanding, counseling, pacifying. Today, in the mind's eye of the public, the picture is alluded to as a matter of past history. Today the public believes lawyers to be "practitioners," which is another way of saying "mechanic." And this is what the master of the loose-leaf service has become—a mechanic. If we have thus fallen as professionals, it is because we have confined our effort in the misguided notion that the concept of craft involves an expertness only in those matters which contribute directly to the financial well being of our clients.

Many sincere lawyers complain that their program is a busy one and leaves little time for activities or interests other than economic. Such interests and activities are characterized as "extracurricular." They are considered a form of self-indulgence or either a hobby or luxury. Separate and apart from the stunting effect that this attitude has had on the individual, do we not owe more to our task than mere competence and more to our clients than skill and personal integrity?

Nothing is more tragic to contemplate than the widely held idea in our profession that civil rights and the laws in connection with them are the peculiar property of the zealot, or on a more dignified level, the Federal specialist. The public rightfully identifies causes only with those who fight for them, only with those who can speak of them. As a consequence, the Bill of Rights has been identified with extremists. Thus has the Fifth Amendment become hyphenated with the odious. Rather than condemn the public or the laymen, as we have so freely done, we should blame ourselves. Do we know how to protect our client's property? Most assuredly. How would we protect his right to vote, to move freely in and around the community, to be heard, if he should wish to speak, to join if he should wish to join, to protest if he should wish to protest, to inquire if he should wish to inquire? How would we do this for ourselves?

Some lawyers, because of special personal identification, need no spur to their interest. Some, like our outgoing President, are so learned in American political history, that their vast knowledge is a self generated force. Most of us have neither. Which brings us full circle and back to Decalogue.

The leading minds today say with conviction that were the Bill of Rights to be proposed today, it would fail of adoption. Upon whom should such a statement make the greatest impression? Upon all lawyers, but particularly on members of Decalogue. The need in the community is definite. The desire to know and to be informed is present. We should respond. Our Society cannot speak to the community at large, but its members can. Should we not, therefore, attempt to inspire among our members the zeal to translate the American political tradition to the community?

The Chief Justice of the United States has spoken boldly, forceably and courageously of the need to educate the American people concerning the Constitution. His recent talk to the American Bar Association in Philadelphia furnishes an excellent basis for further action. The Ford Foundation has generously provided funds to publish material in American history and to make studies of current problems in connection with political freedom. The recent book by Dean Griswold, on the Fifth Amendment, is a

good example of such publication. Here, in our own community, a special American Bar Association committee has launched a project which will culminate in the publication of "An Encyclopedia of Freedoms," which will dramatically present those documents which have been important in our political tradition.

If each member of our Society does no more than attend our forums and our legal education meetings, he will have profited and will have made a contribution to the work of the Society. If he takes his membership seriously, he will feel impelled to help and not only he, but our membership at large, will have benefited.

As never before, each of us needs to be reminded constantly of our obligation to use our skills in service to others. The need exists today in the area of political and intellectual freedom. Following the travail of the American Revolution, it was the genius of a group of lawyers which brought to fruition the Constitution and the Bill of Rights under which we have prospered. God forbid that this should be lost before lawyers today become articulate on the subject!

* * *

**BERNARD H. SOKOL—BIOGRAPHICAL SKETCH**

Bernard Hartstein Sokol was born in Chicago, Illinois, July 29, 1917. Undergraduate, University of Chicago, L.L.B., De Paul Law School, 1941. Admitted to the Bar in Illinois, 1941. Attorney, Department of Justice, Washington, D. C., 1942-43, Foreign Agents Registration Section. 1943-44, Criminal Investigator, United States Army. 1944-48, Assistant United States Attorney, Chicago, Illinois. Experience principally in the prosecution of commercial fraud cases. Member, Chicago Bar Association: Past service: Unauthorized practice of law, Federal criminal law, administrative procedure. Current Committees: Federal legislation, Federal civil procedure.

Mr. Sokol is a member of the following organizations: Covenant Club of Illinois; Federal Post American Legion; Federal Bar Association; American Bar Association; Seventh Circuit Bar.

Mr. Sokol is in the practice of law individually, specializing in Federal practice at 231 South La Salle Street, Chicago, Illinois. He is married and resides with his wife Miriam, and two daughters at 1114 Lincoln Avenue South, Highland Park, Illinois.

## FOR LAWYERS

A course in English for lawyers was offered recently at New York University's Division of General Education. George Britt, attorney, author and lecturer in English at Columbia University, conducted the program which placed emphasis on directness, simplicity and condensation.

## BARTLEY C. CRUM TO SPEAK AT DECALOGUE-ISRAEL BOND LUNCHEON ON OCTOBER 28

The recipient of the Decalogue Society of Lawyers Award of Merit for 1946, Bartley C. Crum, lawyer, lecturer, and author, will be the principal speaker at a "kick off" luncheon sponsored by our Society, on October 28, at the Covenant Club in behalf of the 1955 Israel Bond Campaign. The price of the luncheon is $2.00.

Mr. Crum was one of the six American members appointed by President Harry S. Truman to serve on the Anglo-American Committee of Inquiry on Palestine. He is the author of *Behind the Silken Curtain,* "a personal account of Anglo-American diplomacy in Palestine and the Middle East."

The Decalogue meeting is preliminary to a large city wide sponsored affair, under the leadership of Chicago Israel Bond Committee, on November 12, in the Morrison Hotel at which a member of our Board of Managers, Judge Henry L. Burman of the Superior Court, will be honored for his great devotion and labors in many Israel bond drives and campaigns in the Chicago area and in the Middle West.

## Forum Committee Announces Program

The Decalogue Forum Committee announces that arrangements have been completed to feature, during the next three months, addresses by the following outstanding leaders in the profession and civic life of this city.

**October 14:**

**Augustine J. Bowe,** President Chicago Bar Association.

**Subject:**

*Civil Rights: Aspects of Majority and Minority Problems.*

**November:**

Name of the speaker and date will be announced shortly.

**Subject:**

*Freedom of the Press and its Meaning to the Bill of Rights.*

**December:**

**Leo Lerner,** noted journalist, editor, and the recipient of The Decalogue Society Award of Merit for the year 1945.

**Subject:**

*Freedom of the Press and the Privacy of the Individual; What is Fair Comment?*

**December:**

**Wayne Morris,** distinguished senator from the state of Oregon.

**Subject:**

*Civil Rights and National Security.*

All meetings will take place in the Covenant Club. The membership will be advised in ample time about the exact dates of the above meetings. Second Vice-President Solomon Jesmer is chairman of Decalogue Forum Committee.

# Suggestions on Practice in the Appellate Court

By JUDGE U. S. SCHWARTZ

*Member Judge Schwartz has a long and a distinguished career as a member of the legal profession, public official, philanthropic leader and a member of the Bench. Admitted to the Illinois Bar in 1910, he was alderman of the Third ward from 1916-1925; Judge of the Superior Court since 1939. He was appointed to the Illinois Appellate Court in 1950. The judge was President of the Jewish Welfare Board 1936-1938 and 1942-1946. He is the author of "Schwartz Certificate Plan for Chicago Local Transportation," several articles on Chicago traction and reorganization and he is a frequent writer on legal problems.*

I have on several occasions been asked to write or talk to lawyers on the presentation of a case and other phases of practice in a reviewing court. A great deal has been written on this subject, but I here put down some of my own ideas after a period of service in the Appellate court.

Lawyers who have gone through a long and hotly contested trial, still retain stinging recollections of unfair tactics and ill-considered rulings. The reviewing court, on the other hand, has had no contact with the case; only the cold, bare record lies before it. There is at once the difficulty of contact between high tension wires and rocky soil. To make communication lawyers must endeavor to slough off the emotional antagonisms of the trial. Too ardent an assault upon the court may produce an unfavorable reaction even though judges may understand and sympathize with lawyers who have become deeply involved in their client's case. It is important that the smoldering elements of bitterness be stifled. I have in mind a case in which counsel had been greatly provoked by what he felt was the inadequacy of the trial judge. The issue really centered on an interesting question of law. Much of the brief, however, was devoted to condemnation of the trial court's handling of the case. Many pages were loaded with various styles of type, sentences in black letters, and a host of capitals. In the opinion we made the following comment:

> A reviewing court is thrown into the midst of a problem, whether complicated or simple, with abrupt immersion. Counsel in the preparation of briefs should bear this in mind and make it their first duty to clarify the issues and their position with respect to them. A psychological assault of upper-case artillery and a barrage of emphases serve only to distract and becloud.

The first problem that confronts the lawyer is to give a sufficient account of the case to enable the court to understand the issues. To this end the abstract must be adequate. It will not help to file an inadequate abstract and to leave to the opponent the filing of an additional abstract which can only serve to emphasize his side of the case. If the case is one that turns on facts, there may be quite a story to tell. It can be told in a drab, ineffective manner or it can be told interestingly and at the same time with precise accuracy. As with many phases of practice, this cannot be learned by instruction. Nothing could be more prosaic and less dependent on inspirational drive than the reorganization of a failing enterprise. Yet, Adrian Julian, a great reorganization lawyer of the early part of this century, when asked to talk on that process replied that you could no more tell a man how to reorganize a great enterprise than you could tell a poet how to write a poem or a composer how to write music. Of course, the writing of a brief or the making of an oral argument is not in any strict sense an art. Facts, precedents and reason, all prosaic, are to be presented and positions must be taken. Then begins a consideration of form and structure, of sentence and paragraph, and that is where the elusive faculty called "art" takes over.

In the recital of the events which took place before the appeal, much can be learned in the way of simplicity, clarity and conviction from the great creative writers. To me, the stories of Willa Cather are models which could well serve for the telling of any kind of story. Sentences that generally consist of 15 to 20 words, never more than 35 or 40, reveal in one swift stroke the story of a great man or a household domestic. Of course, that is genius, but it is from genius we learn. I know you have been told by reviewing judges time and again the necessity of making briefs short. Part of this may be due to the fact that judges become impatient. A brief should be adequate to properly present the case. There must be careful selection of the point or points to stress, or the important point

may get lost in a maze. Long quotations from cases are not necessary. It is far better to provide your own summary of an opinion or what you consider to be the relevant portion and in so doing to use as much of the court's language as you see fit. No one has yet been sued for plagiarizing in this fashion. Of course, this must be done carefully because judges do read the cases.

I am one of those who thinks oral argument can be important, although not always. Perhaps in fifty percent of the cases it does not serve any purpose. There are times, when it can illuminate a hazy, obscure corner of a case. I have in mind an instance in which an important point was made in the brief, but its full significance was lost in the dramatic events of the case. On oral argument, under adverse questioning, the lawyer made his point effectively and enlightened the court. This sort of thing does occur occasionally. John W. Davis, in an article on "The Argument of an Appeal," (Jurisprudence in Action, published by Baker Voorhis & Co., 1953) quoted Judge Dillon as saying that it is easy for a court to go wrong unless in oral argument the truth can be hammered out.

With respect to oral argument, there is a little different problem in a three-judge court than in a court with seven or nine members. In our court briefs are read beforehand. How much and to what extent depends upon the individual judge. At first I used to study the briefs carefully before argument, but I found I could become so committed to a position before oral argument that counsel had no chance. I then adopted the practice of scanning the briefs sufficiently to know the facts and still be willing to listen to the argument. Addressing a three-man court leaves little place for eloquence. It is important to hammer at the outstanding point. I know from experience how difficult it is to slaughter the children of your brain and pick out one favorite point, but that must be done. There is generally a point in a case upon which it will turn and to which every other point must be made subsidiary. Most reviewing courts, and particularly three-judge courts, are notorious for their interruptions with questions. This is thought by some to be unfair. Lawyers who have prepared speeches and hope to sway the court by well-rounded arguments are nettled by such distracting interruptions. Nevertheless, considering the nature of the court, it would be a mistake for us not to ask questions and for lawyers not to expect them. They will reveal what the court is bothered about. Often a judge, feeling that a point is sound but not fully confirmed in that conclusion will deliberately ask questions which appear to cast doubt in order to evoke that "pounding out" of the truth Judge Dillon referred to.

Neither I nor any judge under ordinary circumstances is troubled because a lawyer stands up for his understanding of the law. Personalities and sly aspersions have no place, however, in arguments, written or oral.

After the court's opinion is rendered comes the question of whether to file a petition for rehearing. There is much talk at the bar about the extent to which courts consider such petitions. They represent the only opportunity the defeated party has to tell the court what he thinks of it and its opinion. A little careful, introspective checking-up would here be appropriate. A lawyer might well remember that he is not looking at the case with clear sight but with the astigmatic view of a frustrated partisan. If catharsis is needed, some other method ought to be found. When I was a practicing lawyer, I made it a point to re-read opinions some four or five years after they had been rendered, when I was able to take a less partisan point of view. On several such occasions I reluctantly concluded that the court was right. In the vast majority of instances, petitions for rehearing are denied. The reason is simple. In a three-judge court there are not one, but many conferences over a case. In one case we had at least twenty-five, and finally a divided court. Obviously, where a matter has been reviewed again and again there is little chance that any point has not been fully considered by the court, even though not fully discussed in or omitted from the opinion. Nevertheless, the petition for rehearing is carefully read if for no other reason than the lurid attraction of its often emotional content.

If the petition for rehearing is denied, you may consider whether to ask for a certificate of importance. Two questions are involved. Where the amount is more than $1500 there is no reason why a petition for leave to appeal can-

not be filed and thus let the Supreme court determine whether to take the case. Where the amount in controversy is less than $1500, the question before us is whether any principle of sufficient importance requires decision. In our determination we must take into account the fact that the Supreme court carries a tremendous load of work. The mere fact that a matter of first impression is before us is not enough. Many such decisions are made by the Appellate court and acquire sufficient stability on their own without submission to the highest court.

As I have advised the selection of one important point in the argument of a case, perhaps I should here point out which of the matters I have discussed what I consider to be the most important. I would say it is the establishment of communication between lawyer and the court—a clear, concise statement of the facts and issues involved.

## *A Toast to the Bench*

President Bernard H. Sokol announces that one of the most popular social events of our Society—A Toast To The Bench is again on the Society's agenda. The affair is scheduled to take place on December 21, at the Covenant Club. Initiated but two years ago to emphasize the organization's esteem for all the courts in the Chicago area, Cook County, this fellowship "get together" between the Bar and the Bench has made each time for increasing attendance. Complete details about the forthcoming event will be made available soon. First Vice-President, Morton M. Schaeffer is in charge of arrangements.

## IRVING LANDESMAN

Member Irving Landesman is receiving the congratulations of his friends upon his recent appointment as chief of the Ordinance Enforcement division of the City of Chicago, Department of Law. Prior to his elevation as head of his division, Mr. Landesman served for 13 years in the Torts Division and Ordinance Enforcement department of the Corporation Counsel's office. In 1952, Mr. Landesman was Democratic candidate for a trusteeship of the Sanitary District of Chicago.

# Applications for Membership

MARVIN M. VICTOR, *Chairman Membership Committee*

| *APPLICANTS* | *SPONSORS* |
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| Herman S. Werner | Benjamin Weintroub and Paul G. Annes |
| Aaron S. Wolff | Michael Levin |
| O. David Zimring | Benjamin Weintroub and Harry Krinsky |

## LEGAL EDUCATION

Judge Julius H. Miner of the Circuit Court, Cook County, was the first speaker to address our Society, under the auspices of our Legal Education Committee on its Fall season program. The Judge spoke on September 16, at a luncheon in the Covenant Club, on the New Divorce Law enacted by the Illinois General Assembly at the last session.

Selecting its programs with an emphasis on everyday problems facing the practitioner, the second meeting will deal with the comprehensive revision of the Civil Practice Act. Mr. Harry Fins will be the speaker; date of this meeting will be announced shortly. As in the past, members are invited to bring their friends in the profession.

Maynard I. Wishner has been reappointed chairman of the Legal Education Committee for the ensuing year.

# Migratory or Inter-State Divorce in the U. S. and its Effect in Illinois

By MEYER WEINBERG

*Member of our Board of Managers, Meyer Weinberg is the author of* ILLINOIS DIVORCE, SEPARATE MAINTENANCE AND ANNULMENT, *Bobbs-Merrill Publishing Co.*, $15.00.

Justice Holmes in his lectures on the Common Law noted that the "life of the law has not been logic; it has been experience." This capsule of legal philosophy finds vivid application to the law of Migratory or Inter-state divorce.

Many writers on law subjects expressly note that no category of law reaching the Supreme Court of the U. S. within recent years, has created more uncertainty, expressed more defeatism, nor caused more confusion than the even dozen landmark cases decided since 1942, involving Migratory or Inter-state divorce.

The uncertainty in the law was pointedly expressed by Justice Douglas in his dissent in Estin v. Estin, 334 U. S. 541 (1947) wherein he stated:

"If there is one thing that the people are entitled to expect from their lawmakers, it is rules of law that will enable individuals to tell whether they are married and, if so, to whom. Today, many people who have simply lived in more than one State do not know, and the most learned lawyer cannot advise them with any confidence. The uncertainties that result are not merely technical nor are they trivial; they affect fundamental rights and relations such as the lawfulness of their cohabitation, their children's legitimacy, their title to property, and even whether they are law-abiding persons or criminals. In a society as mobile and nomadic as ours, such uncertainties affect large numbers of people and create a social problem of magnitude."

Defeatism was manifested by Justice Frankfurter in Williams v. North Carolina, 317 U. S. 287 (1942), wherein he stated, in effect:

Except for a very small fraction of the community, resolving such conflicts among the laws of the States are in all likelihood matters of complete indifference. Our occasional pronouncements upon the requirements of the Full Faith and Credit Clause doubtless have little effect upon divorce.

That there is confusion was expressly stated by the late Justice Jackson in his dissent in Rice v. Rice, 336 U. S. 674 (1948) wherein he stated in part:

"Since this case involves only reappraisal of evidence and we decline to do that, it is hard to see a reason for granting Certiorari unless it was to record in our reports an example of the manner in which in the law of domestic relations . . .'confusion now hath made his masterpiece. . . .'

". . . this court is not responsible for all the contradictions and conflicts resulting from our federal system or from our crazy quilt of divorce laws, but we are certainly compounding those difficulties by repudiating the usual requirements of procedural due process in divorce cases and compensating for it by repudiating the Full Faith and Credit Clause."

This turmoil and dissent at the summit of judicial system in the U. S. is reflected in the apparent increase of such problems in all state case reports.

To analyze the problems of Migratory or Inter-state divorce, there must be determined as a legal starting point, the jurisdictional basis of the U. S. Supreme Court. Since the 10th Amendment of the U. S. Constitution reserves in effect authority over marriage and divorce to the states[1] which thus may translate into laws its individual policies as to the family as an institution, one must seek elsewhere in the constitution, and in doing so, finds two other provisions relevant herein. Such are the Due Process of Law and Full Faith and Credit clauses in the U. S. Constitution which make the states subordinate.

The Due Process Clause is not a basic problem in this class of law as all states provide for some form of notice to the defendant and any reasonable notice, whether personal or substituted, in the ordinary course of events, is sufficient to satisfy due process of law. . . . See: Griffin v. Griffin, 327 U. S. 220 (1945) . . . and due process does not demand that either party be given a second chance to litigate the problem.

The other Constitutional provision (Sec. 1 of Art. IV) is the magical Full Faith and Credit Clause and provides:

"Full faith and credit shall be given in each state to the public Acts, Records and Judicial Proceedings of every other State. And the Congress may by general laws prescribe the manner in which such Acts, Records and Proceedings shall be proved, and the effect thereof."

By the Act of May 26, 1790, Congress has provided that judgments "shall have such faith and credit given to them in every court of the

[1] Popovici v. Aigler, 280 U. S. 379 (1930)

United States as they have by law or usage in the Courts of the state from which they are taken." This clause is the important provision and on this clause is based the jurisdiction of the United States Supreme Court to hear this class of case.

This clause, accordingly, is basic to the determination of the validity of sister state decrees, but, has no application to decrees of foreign countries. . . . See: Hilton v. Guyot, 159 U. S. 113 (1895).

There are five basic problems of Migratory or Inter-state divorce in the U. S.

The first of these problems involves the validity of an ex parte decree of divorce of a sister state. This was resolved by the two Williams v. North Carolina cases (317 U. S. 287) (325 U. S. 226),[2] which overruled the tumultuous and much criticized Haddock v. Haddock, 201 U. S. 502 (1906) and the following doctrinal pattern was established:

That a decree of divorce by a state is entitled to prima facie weight but may be collaterally attacked in a sister state by proof that the court of the forum had no jurisdiction and that the parties were not domiciled therein even though proceedings in the forum expressly showed jurisdiction and domicile; that domicile is a jurisdictional fact and it would be intolerable to permit a finding in the forum to foreclose all states from protecting their social institutions.

Illinois, as recently as two years ago, expressly followed and cited with approval the U. S. Williams II doctrine, in Ludwig v. Ludwig, 413 Ill. 44 (1952) and the court therein stated: [3]

"The principles underlying the validity of out-of-state divorce decrees have recently been renewed and promulgated anew by both this court and the Supreme Court of the U. S.; Williams v. North Carolina 325 U. S. 226, 248; Esenwein Pennsylvania, 325 U. S. 279; Atkins v. Atkins 393 Ill. 202.

"According to our determinations, which are clearly consistent with those of the Supreme Court of the U. S., the introduction of an out-of-state divorce decree constitutes prima facie evidence of its validity. . . . However, if the litigant who would escape the operation of the out-of-state decree sustains the burden of impeaching the jurisdictional pre-requisite of bona fide domicile, then the decree will be deemed neither valid nor entitled to full faith and credit.

"On the contrary, the evidence reveals defendant deliberately attempted to circumvent the more stringent requirements of the Illinois divorce laws and procure a Nevada decree under the flexible concept of 'mental cruelty.'"

What advice can Illinois lawyers, alert to the Williams doctrine, give in Illinois to a client who would seek another jurisdiction . . . an easy divorce mill? There is no rule of law which prevents a party from changing his domicile to secure advantages of laws of a new domicile as long as the new residence is bona fide and such divorce will be recognized in the former domicile. (See: Grein v. Grein 303 Ill. A. 398 (1940).

Advise him to make a "clean break," and do all possible steps to "uproot." The following are suggested:

(a) Close all bank accounts.
(b) Sell all property.
(c) Remove name from voting list.
(d) Resign from all clubs.
(e) Cancel charge accounts.
(f) Notify insurance companies.
(g) Publish change of residence—no further responsibility except personal debts.

In the New Place:

(a) Buy or lease quarters.
(b) Get permanent job.
(c) Register to vote.
(d) Join a local church.

Yet, none of these constitute a guarantee against collateral attack.

The second basic problem of Migratory or Inter-state divorce and as a natural by-product of the Williams doctrine, is the situation where the "stay-at-home" spouse, having received notice that an action for divorce was filed, "gets her dander up" and decides to contest the proceedings in that state. Accordingly, this ceases to be an ex parte proceeding. Such a case was embodied in Sherrer v. Sherrer,[4] reported in 334 U. S., and the result was a variation from the Williams II doctrine.[5]

The U. S. Supreme Court stated:

"Here, unlike the situation present in Williams v. North Carolina, 325 U. S. 226 (1945) the finding was made in a proceeding in which the defendant appeared and participated. . . .

"We believe that the decision of this Court in the Davis case, 305 U. S. (1938) and those in related situations are clearly indicative of the result to be reached here. Those cases stand for the proposition that the requirements of full faith and credit bar a defendant from collaterally attacking a divorce decree on jurisdictional grounds in the courts of a sister state where there has been participation by the defendant in the

[2] See: Williams v. North Carolina—*Whither Now?*—in John Marshall Law Quarterly (1943)

[3] Accord; Est. of Rush 350 Ill. A. 120 (2nd Dist.—April 1953)

[4] See: Migratory Divorce; The Sherrer Case and the Future—A Prophecy (40 American Bar Journal No. 8 —August 1954)

[5] Accord: Coe v. Coe, 334 U. S.

divorce proceedings, where the defendant has been accorded full opportunity to contest the jurisdictional issues, and where the decree is not susceptible to such collateral attack in the courts of the state which rendered the decree."

The U. S. Supreme Court in 1951 extended the Sherrer and Coe doctrine, by decision in Johnson v. Muelberger, 340 U. S. 581, when it decided that a Florida decree could not be collaterally attacked by a daughter of a deceased father who had participated in Florida proceedings.

These three cases basically established the Doctrine of Participation or Estoppel, and the pendulum has now swung from the extreme Haddock view of "Matrimonial Domicile" to the opposite view, and established that no matter how meager the evidence of residence, participation will "estop" collateral attack; the traditional regard for domicile herein has become a thing of the past. To dramatize the effectiveness of this doctrine, attention is drawn to the recent three well-publicized divorces of Marie McDonald, with a $600,000 settlement, Bobo Rockefeller with a gross arrangement of $6,000,000, and Rita Hayworth, whose agreement made her daughter an heir to a Moslem fortune of a half billion dollars. Lawyers handling these matters relied on this doctrine of participation.

Illinois expressly followed the U. S. Supreme Court view expressed in Sherrer v. Sherrer and Coe v. Coe, in Buck v. Buck, 337 Ill. A. 520 which is the most recent case in Illinois Reports. The Supreme Court of Illinois therein stated:

"In our opinion the decrees and reasoning in the cases of Chamblin v. Chamblin, 362 Ill. 588; Coe v. Coe, 344 U. S. 378; and Sherrer v. Sherrer, 334 U. S. 343, sustain the decree entered by the chancellor in the instant case."

However, the most important phase [6] of participation is still open—as to what legal steps constitute participation so as to invoke the Sherrer doctrine of Estoppel.

The U. S. Supreme Court set up a standard in Johnson v. Muelberger, 340 U. S. 581, wherein Justice Reed stated:

"It is clear from the foregoing that under our decisions, a state by virtue of the clause must give full faith and credit to an out-of-state divorce by barring either party to that divorce who has been personally served or who has entered a personal appearance from collaterally attacking the decree."

[6] See: DePaul Law Review, Vol. IV—No. 1 (Winter 1954)

There is a view which attempts to restrict the Sherrer doctrine; and to distinguish the Sherrer case, as in the following: [7]

Staedler v. Staedler, 78 A. 2d 896, 6 N. J. 380 (1951):

The New Jersey court indicated that since the husband selected wife's attorney, who filed an Appearance, she has not participated and is not bound by the Sherrer doctrine and could attack collaterally the Florida decree.

Davis v. Davis, 259 Wisc. 1, 47 N. W. 2d 338 (1951):

The Wisconsin court held that a Special Appearance distinguishes the Sherrer doctrine; so a Wyoming decree was denied Full Faith and Credit.

In the four Illinois cases including the Buck case, there is no special guide on this subject.

The third basic problem in Migratory or inter-state divorce is embodied in the concept of Divisible Divorce. Unlike the first two problems wherein we concerned ourselves only with the termination of the marriage, herein we also consider the effect of a sister state decree on the right to alimony, child support or property in the home state. This problem is embodied in a legal concept unique and new to American jurisprudence, namely, Divisible Divorce. Although the idea germinated and was hinted at in the Esenwein case, 325 U. S. 279 (1945) but was in the nature of a dictum, the doctrine of Divisible Divorce reached fruition in the Estin case, 334 U. S. 541 (1947). The facts were:

The parties were married in 1937 and lived together in New York in 1942 when he abandoned her. No children were born. In 1943, she sued for a separation. He filed a general appearance. The court granted the wife $180.00 per month as permanent alimony. In 1944, the husband went to Nevada and sued for divorce. The wife was notified by constructive service. The court granted a decree; no provision was made for alimony, although the Nevada court had been advised of the New York decree. The husband, although he had paid on the New York decree, ceased to pay after entry of the Nevada decree. The wife sued in New York and was granted judgment and the husband's effort in New York to vacate failed. The U. S. Supreme Court affirmed for the wife and stated:

[7] Also See: Brasier v. Brasier, 200 Okla. 689, 200 P. 2d 427 (1948)
Breen v. Breen, 199 N. Y. Misc. 366, 103 N. Y. S. 2d 554 (1951) Appearance by a Guardian Ad Litem

". . . the highest court in New York has held in this case that a support order can survive divorce and this one has survived petitioner's divorce. That conclusion is binding on us, except as it conflicts with the Full Faith and Credit Clause.

"We can put to one side the case where the wife was personally served or where she appeared in the Divorce proceedings . . . Sherrer v. Sherrer . . . Coe. v. Coe. The only service on her in this case was by publication and she made no appearance in Nevada proceeding. The requirements of procedural due process were satisfied and the domicile of the husband in Nevada was foundation for a decree effecting a change in the marital capacity of both parties in all other states of the Union, as well as in Nevada. Williams v. North Carolina, 317 U. S. 287, but the fact that marital capacity was changed does not mean that every other legal incidence of the marriage was necessarily affected.

"The New York judgment is a property interest. . . . That is an attempt to exercise an in personam jurisdiction over a person not before the court. That may not be done. Since Nevada had no power to adjudicate respondent's rights in the New York Judgment, New York need not give full faith and credit to that phase.

"The result in this situation is to make the divorce divisible . . . to give effect to the Nevada decree insofar as it affects marital status and to make it ineffective on the issue of alimony. It accommodates the interests of both Nevada and New York in this broken marriage by restricting each State to the matters of her dominant concern."

In Illinois (as I reported in the *Chicago Bar Record* in March 1954) the problem comparable to the Estin case was reported for the first time in Pope v. Pope, 2 Ill. 2d 152 (1954). The Illinois Supreme Court stated:

". . . we hold that the Nevada decree, although regarded as a valid determination of the parties' capacity to remarry, does not have the effect of terminating the plaintiff's right to support. . . . Marriage is an aggregate of rights and duties; a decree of divorce enables the parties to contract a new marriage; that it does not necessarily relieve them of all the obligations of the old relationship is witnessed by the award of alimony upon or even after divorce. Ill. Rev. Stat. 1953, Chap. 40, Par. 10; of Darnell v. Darnell, 212 Ill. App. 601; Estin v. Estin, 334 U. S. 541; May v. Anderson, 346 U. S. 528."

The fourth basic problem on Migratory or inter-state divorce and specifically as to Illinois law, is really a related series of four practical problems relevant to enforcement of sister state decretal provisions of alimony, separate maintenance and child support. Necessarily, the rules applicable to these are peculiar to themselves because herein we must seek both the recognition and enforcement of those provisions in the State where the paying party is or his property is located. This problem, unlike our third problem, however, is different in that we are seeking to enforce support orders entered in conjunction with a sister state divorce decree or we have the situation where knowing no such provision was made and the party would seek to establish in Illinois a basis for such support.

A money judgment may be secured by civil suit or registration by statute in Illinois in accordance with full faith and credit as to past due and vested installments of temporary or permanent support—as long as decrees or orders were by a court having "in personam" jurisdiction over parties and they are not modifiable.

As to the enforcement of a sister state decretal provision of alimony by equitable means or contempt, there is a conflict in Illinois on the Appellate court level.

In Rule v. Rule, 39 N. E. (2d) 379, 313 Ill. App. 108 (2d Dist. 1942) a case of first impression in Illinois, a Nevada decree was given full faith and credit and equitable relief was granted.

In Tailby v. Tailby, 97 N. E. (2d) 611, 342 Ill. App. 664 at p. 672 (1951)[8] it was stated:

"The decree did not provide for any general equitable relief. Plaintiff cites Rule v. Rule, 39 N. E. (2d) 379, 313 Ill. App. 108, decided in 1942, which case is directly in point. However, in Clubb v. Clubb, 84 N. E. (2d) 366, 402 Ill. 390. . . .'We have therefore held that jurisdiction of courts of equity to determine divorce cases and all matters relating thereto is conferred only by statute and these courts may exercise their powers in such matters within the limits of the jurisdiction conveyed by statute and not upon general equity powers. . . . If a court of equity in our state has no general powers over divorce cases and all matters relating thereto, and citizens of our state cannot procure relief in such matters unless statutory authority permits, it would not be just for us through claimed comity or alleged general powers to allow enforcement by our equity courts, through civil contempt, of a decree of a foreign country for the payment of alimony to one of its subjects. In our opinion, comity does not require us to go that far. . . . However, no statute of Illinois has been called to our attention conferring specific authority of courts of equity, in this state to enforce through civil contempt divorce decree of another state.'. . ."

There is no case in the Illinois Reports covering the allowance of alimony based on a sister state decree of divorce which does not provide for alimony. In view of Section 18 of the Divorce Act (Ch 40 Ill. Rev. Statutes—1953) which permits, based on Illinois decrees, post-decretal alimony where not expressly denied and also the admonition in Estin v. Estin, 334 U. S. 541 (1948) against discrimination against

[8] See: Clubb v. Clubb, 402 Ill.

sister-state decree, there is a view that alimony in this situation would be allowed.

While discussing this problem, the interesting case (similar in nature) of Darnell v. Darnell, 212 see A 201 (1918) should be noted. Suit was filed in Cook County, Illinois, for alimony and child support based on a Minnesota decree of divorce granted for conviction of a felony wherein service had been by publication. The said decree had specifically reserved the matter of alimony for the Circuit Court of Cook County or such other court as shall have jurisdiction. The Court reversed for the wife and granted alimony; it stated that since in Illinois such a reservation would have permitted alimony, hence such should be allowable based on the Minnesota decree.

As to the problem of securing child support in Illinois, based on a sister state decree of divorce which does not provide for same, there are two cases reported in Illinois, one from the First Appellate District and one from the Second Appellate District, but these are in disagreement. In Parker v. Parker,[9] 335 Ill. App. 293 (1948), the court allowed same and stated in part:

"The sole issue confronting this court is a question of law whether a minor whose parents were divorced in another state in a proceeding where no support order could be entered, inasmuch as the defendant father was outside the jurisdiction of the court, can maintain a petition for support in a court of equity in Illinois, where the father has established residence. . . .

At p. 299. . . ."The only case in this jurisdiction adjudicating similar rights is Hawkins v. Hawkins, 288 Ill. App. 623, where the Appellate Court of the First District dismissed for lack of jurisdiction an action brought by a divorced wife to compel her ex-husband to support their child where the divorce was procured in Wisconsin by default and publication. In the absence of a decision on the precise issue by the Illinois Supreme Court, this court does not feel obliged to follow the Hawkins case, particularly where there is a respectable body of precedent to the contrary established by the courts of other jurisdiction, and the rights of the parties cannot be enforced in any other forum. . . ."

A special problem as to alimony, which involves the reactivation of alimony after a sister state annulment decree, was well typified by Linneman v. Linneman, Ill. App. 2d 48 (1954), which posed a variation from the usual[10] Full Faith and Credit Clause problem.

Mrs. Linneman was granted, on July 2, 1947, a decree of divorce which, among other things, provided for alimony monthly, until her death or remarriage. She remarried in Illinois (her alimony ceased), and moved to California. After four months she separated from this husband, and a year after the marriage she secured a decree of annulment in California, based on impotency; this decree was perfunctory and the impotency was not corroborated. She then demanded that the previous husband resume alimony payment. He refused to pay. Having moved to Glencoe, Illinois, she initiated contempt proceedings in Cook County. The trial court denied her petition.

The Illinois Appellate Court affirmed and held substantially as follows: The law governing marriage is the law where it was entered into. So here, since the marriage was in Illinois, it could not be annulled in California for impotency, which is not a ground for annulment in Illinois. Full faith and credit does not require the Illinois court to recognize the California decree of annulment.

The fifth, and last but most sensitive and poignant, if not the most important problem, arising out of Migratory or inter-state divorce, is that of Child Custody. It is fairly apparent that the rules employed in the first two problems as to the termination of a marriage or the rules applied in the next two problems of alimony, separate maintenance and child support, would not be a solution to custody problems.

The U. S. Supreme Court in two decisions, May v. Anderson, 345 U. S. and Halvey v. Halvey, 330 U. S., has fenced in for us rules that are binding on the States. They have established two basic classes of principles; first, as to jurisdiction and second, as to the binding effect of the law of the granting state entering the decree, (based on full faith and credit) in the state where the custody is being litigated.

Although the May v. Anderson case was decided seven years after the Halvey case, to be consistent with the time sequence of ordinary litigation, let us discuss that case first.

Anderson and his wife, Leona Anderson May, were domiciled in Wisconsin until December 1946. After a period of discord, she went to Ohio with the children to think matters over, and informed him that she would not return.

[9] See also Oddo v. Oddo, 341 Ill. A. 417 (Also—1950); Shaw v. Shaw, 332 Ill. A. 442

[10] See: Sutton v. Lieb, 342 U. S. p. 402; Lehmann v. Lehmann, 225 Ill. App. 513 (1922)

Although the children were in Ohio, the said decree granted him custody. The wife was not personally served and did not enter an appearance. The court did not have jurisdiction "in personam" over her. Armed with the Wisconsin decree and a police officer, he brought the children back to Wisconsin. They stayed for four years. On a visit in 1951 to Ohio, the mother kept the children and refused to return them. The husband filed Habeas Corpus proceedings in Ohio based on the Wisconsin decree. It was granted, based on his contention that the children had, as was stipulated, a technical domicile in Wisconsin, even though they were not resident nor present at time of decree.

The U. S. Supreme Court reversed the Ohio court, and held, in effect, that Ohio was not bound by the Full Faith and Credit Clause to give effect to a decretal provision as to custody in the Wisconsin decree because the divorce action was ex parte and the Wisconsin court had no personal jurisdiction over the mother. The court used the analogy that since (as in Estin v. Estin) an ex parte decree could not cut off property rights, so for sure it could not cut off rights to custody.

Illinois has followed that rule before and after this case was decided. In two early Illinois cases, People v. Hickey 86 Ill., and in People ex rel Noonan v. Wingate 376 Ill., although by dictum in each case, the Illinois courts held that a decree for custody of children, where the children and the spouses are outside the jurisdiction of that court, need not be given full faith and credit.

In a very recent case, People ex rel Kolsh v. Tone 3 Ill. 2d, decided not too many months ago, the court also followed the jurisdictional principle. In that case the mother had secured a decree of divorce in Massachusetts and custody of the child. The father had appeared in that case. The mother then, without consent of the court or approval, took the child to Illinois. The father filed a petition in the Massachusetts court to modify the custody provision and served notice on his wife in Illinois. The custody provision was modified and custody was given to him. He filed a Habeas Corpus proceeding in Illinois and one of the defenses was that there was no jurisdiction for the change. The Illinois court held that jurisdiction is necessary and that there was jurisdiction over both parties and the jurisdiction was continuing. The Illinois Supreme Court reversed for the father and stated:

"We think the order of the Massachusetts court, modifying the divorce decree and awarding custody to relative must be recognized and given full faith and credit by the courts of this state if the Massachusetts court then had jurisdiction over the parties and subject matter. People ex rel Halvey v. Halvey, 330 U. S. 610. . . . In the present case jurisdiction had been acquired by virtue of process in the original suit, and the mother took custody subject to the court's restraining jurisdiction to modify or change it."

"The requirements of full faith and credit for judgments affecting custody of children depends upon the effect which they are accorded in the state where they were rendered. . . . (People ex rel Halvey v. Halvey, 330 U. S. 610)."

The second principle was established by the U. S. Supreme Court in the Halvey case, 330 U. S. 610. The facts were:

The Halveys were New Yorkers. Discord developed and Mrs. Halvey took the child to Florida and then secured a decree of divorce by publication, and custody of the child, but the day before the decree was entered, the husband took the child to New York without the knowledge or approval of his wife. She filed Habeas Corpus proceedings and the New York court ordered as follows:

(a) Custody of the child to the mother.

(b) Visitation privileges to the father.

(c) Mother put up bond on delivery of the child in Florida.

The objection by the mother was that full faith and credit was not given to the Florida decree.

The U. S. Supreme Court affirmed and stated: To determine custody, the law of the state granting the decree (Florida) shall apply, and under Florida law, custody decrees are res adjudicata only as to facts up to then. New York, under the Full Faith and Credit Clause, can do what Florida could do, and hence the New York order was proper.

Illinois has followed this rule in the Kolsh case, which cited the Halvey case, and procedurally added that the record not showing the law of the state (Massachusetts) where custody decretal provision was entered, Illinois will presume that the law of the state is the same as Illinois, which means, within the framework of the welfare of the child, a change of circumstances may be a basis for change of custody.

## Civic Affairs Committee

A comparative study of the McCarran-Walter Act and two bills introduced in the last session of the Congress by Senator Lehman and Representative Yates, designed to remove and amend those portions of the Act which have been widely criticized, is scheduled to occupy a major portion of the work of the Civic Affairs Committee for the coming year.

Other areas in which the Committee hopes to function will follow, in part, the contemplated survey of the Senate Subcommittee on Constitutional Rights of the extent to which the constitutional rights of the people of the United States are being respected and enforced. Senator Thomas C. Hennings, Jr., of the Committee on the Judiciary, is the Chairman of the Subcommittee.

Richard L. Ritman is the chairman of the Civic Affairs Committee and Maynard Wishner is the vice-chairman. Members desiring to work with this committee are urged to communicate with the office of the Society or the chairman.

## SAMUEL A. HOFFMAN

Member Samuel A. Hoffman, for more than forty years prominent in the philanthropic and communal affairs of this City, died on June 17. He was a lecturer, a former state's attorney, and an educator who taught in the early part of this century in a school bearing his name.

In private practice Mr. Hoffman was defense counsel in many important criminal cases. He was the author of *Outline of Oriental History, Banking as a Profession,* and *Banker Looks at Communism.* Mr. Hoffman was a vice-president of Exchange National Bank of Chicago.

Survivors include the widow, Florence; two sons, Arthur J. and Theodore H.; a stepson, Herbert Bernstein; two daughters, Mrs. Ellen O'Donnell and Mrs. Jean Beletz, both of Chicago; one brother, and three sisters.

## Political Education

A resolution proposing that the basic differences between the American way of life and communism be taught in schools, colleges and universities was adopted this week by the American Bar Association. This is a reversal of a position taken by it last year and is a commonsensical change of mind that we hope reflects a more enlightened attitude of the entire country on the subject. . . .

. . . The bar association resolution is worded to give support to a joint congressional resolution sponsored by Rep. Daniel J. Flood (D-Pa.). This would set up a commission of 11 members from Congress, the bar association, the Association of American Colleges and the American Council of Education.

This group would publish a book incorporating testimony taken under oath by Congress and other government agencies that have investigated communism. It would also prepare a suggested curricula of studies for teaching the difference between the American way and communism.

. . . This appears on the surface to be a good program but when and if it ever is undertaken the commission should bend over backwards to avoid giving even the appearance of preparing a government directive to educational institutions.

It must not substitute an Orwellian government propaganda textbook for the critical scrutiny of all forms of government that should go on continuously in colleges. . . .

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## JACOB M. FISHMAN ON ISRAEL

Member of our Board of Managers Jacob M. Fishman, who had recently returned from a visit to Israel, addressed our Board, on September 9, at a luncheon in the Covenant Club. Fishman's were vivid observations touching upon many facets of Israeli life. There were questions from the floor.

## HYMAN B. RITMAN MOURNED

Our Society notes with deep regret the passing of member Hyman B. Ritman, lawyer and communal leader. Long a member of the Chicago Bar, Mr. Ritman served for several years as assistant corporation counsel in our City's law department and represented it in several important law suits. Surviving are the widow, Rose; daughter, Catherine; and three sons, Richard, Robert and William.

# MICHAEL LEVIN REPORTS

**Chairman of Placement and Employment Committee Describes Activities**

Since January 1, 1955, 59 lawyers made application to the Decalogue Society of Lawyers for placement. During the same period, 45 employers called our headquarters advising it of openings for lawyers. Ninety-seven referrals were made from which 41 lawyers were finally placed. These statistics fail to reveal adequately the extensive use which members make of this phase of our Society's activities—the great need of young lawyers for placement which to some extent The Decalogue Society is able to satisfy.

Whether as a result of the free advertisement which appears daily in the *Chicago Law Bulletin* about our Placement Committee requirements or because of the reputation that our Society has earned for service to the profession, we are frequently called by non-member lawyers for applicants and, occasionally, we receive and accept applications from non-eligible lawyers—non-eligible as far as membership in the Society is concerned. We never turn down applicants because of their race, creed or color.

In the past year your Committee has met several times and arranged its work on a more business-like basis. Heretofore, applicants were interviewed by the several members of the Committee in their respective offices and were sent forth on a hit or miss basis. Now, however, printed application cards are completed by the applicants in the office of the Society and filed with our secretary. Upon finding of an opening a referral card is completed and given or mailed to the applicant with appropriate instructions.

The Chairman is happy to report that aside from the fact that the Committee is performing a highly useful and important function he finds this activity most gratifying. On a number of occasions, upon entering a law office on personal business, your Chairman has been warmly welcomed by one of the lawyers present with a remark such as, "Don't you remember me, you placed me here?"

The work, however, is not without its problems; too frequently both the applicant and the employer neglect to notify the Society when an applicant has been accepted and placed. This, regrettably, results in many unnecessary referrals and calls. There is also a great need of educating the applicant regarding what he may reasonably expect in the way of compensation during his "period of internship" and of the type and character of his duties.

Your Committee plans to iron out these and other problems and make itself ever more useful than it has been in the past.

## CONGRATULATIONS

Member Fannie N. Perron was recently appointed assistant corporation counsel of the City of Chicago in the Ordinance Enforcement Division of the corporation counsel's office. Mrs. Perron, long a practising lawyer, is a former assistant state's attorney and a former member of the Cook County Recorder's office where she held the post of abstract maker and examiner.

## THANKS

Among the many members who helped make a great success of our Twenty-First annual outing on July 14, at the Chevy Chase Country Club, several distinguished themselves as solicitors of prizes. Thanks are especially due to Messrs: Max Andalman, Eugene Bernstein, Reginald Holzer, Alec E. Weinrob and Samuel Shkolnik. Through their efforts our gala event was outstanding in the number of free door-prizes.

## RE-ELECTED

Member Samuel H. Baskin was re-elected President of the Covenant Club of Illinois for another one-year term.

## CONGRATULATIONS

Member Richard S. Kaplan, who resides in Gary, Indiana, was elected First District Commander of the American Legion, Department of Indiana. The installation was held on Wednesday evening, August 3rd, 1955.

Mr. Kaplan has long been active in the legal profession and civic affairs in Indiana.

## ELECTED

Member Leo Wulfsohn, Hot Springs, Arkansas, was elected District Commander of the 14th District, The American Legion Department of Arkansas. He is a Past Commander of Albany Park Post No. 124 of Chicago, Illinois.

# BOOK REVIEWS

*Speaker's Encyclopedia of Stories, Quotations and Anecdotes,* by Judge Jacob M. Braude. Prentice-Hall, Inc. 476 pp. $4.50.

*Reviewed by* ELMER GERTZ

Judge Braude had great fun compiling this work, and the average person will have great fun reading it—even if it does not make a renowned public speaker out of him. Everyone, and particularly lawyers, aspires to hold audiences spell-bound, by his wit, wisdom, stories, diction, the epochal flow of his eloquent language. From the least sophisticated person to the most literate, there is an almost pathetic belief in magical farmulae that will turn the dumb and inarticulate, even stutterers, into gifted orators. We all cherish guides to this, that and the other thing, and why not guides to public speaking? This guide may or may not accomplish its avowed purpose, but it is certainly as good an attempt as we have yet seen and it is worth reading by and of itself. Since when does one have to make an excuse for a *bon mot* or an apt story or for 2900 separate and distinct items, all readable?

Some statistician, who is probably not a public speaker, has announced that there are 126 unusual stories, 400 epigrams, 1100 quotations, 67 proverbs, 530 anecdotes, 38 poems, and 320 definitions in this work, being the *creme de la creme* of thousands of other examples collected by Judge Braude over a period of more than 40 years. Everything is triple indexed, so as to simplify the use of the work by would-be speakers, according to topic (as for example, "ability"—with six entries, "absence" —with one entry, "achievement"—with no less than 11 entries, etc., etc.), by author and source (from Edgar Guest, with seven excerpts, to Shakespeare, with only six excerpts), and by names and personalities of those referred to.

It is a fascinating business trying to figure out why this person or that is a favorite of the compiler. Shakespeare, as has been noted, is represented by only six selections, but Lincoln by 26, and Oscar Wilde by no less than 34. It is not that one would quarrel over the items included or excluded; one would simply wonder, and that is all.

The unconscious humor is sometimes ribtickling, as when the following appeared: "Alimony—See Marriage," or "Food—see also Diet."

The book starts with a highly readable introduction in which Judge Braude tells us how to select interesting themes, outline talks, win and hold an audience, use jokes effectively, deal with hecklers, handle questions and answers, and the other problems that confront speakers, particularly those who are non-professional. Much of his advice is sound and shrewd and bears repetition. "There is nothing more pathetic," he says, justly and pithily, "than an empty speaker pouring himself forth to a full house." His cardinal rule is that one should have something to say, and to say it in natural language and in a sincere manner. He suggests that speakers weave local tidbits into their talks, so that both speaker and audience will feel at home. He urges an electrifying start to a talk, and that there be a natural mounting to a single climax. As one familiar with copyright law and the problems of literary piracy, I am glad to see that the Judge says: "When quoting, always give full credit to the source being quoted." It is amazing how often otherwise reputable men steal and thereby debase the best mintage of others.

And then, having given the reader the benefits of his long public speaking experiences by sage advice, he ends his introduction with the soundest advice of all: "If a speaker doesn't strike oil within ten minutes, he should stop boring."

It is tempting to quote from this volume so glittering with verbal gems. My advice to the reader, in lieu of lengthy quotations, is to buy this book and masticate its richness daily. One day you will peruse the section on folly, to cite one typical part of the book. From it we learn that "When you are arguing with a fool, two fools are arguing," and we can ponder over the gentle raillery of Anatole France: "If fifty people say a foolish thing, it is still a foolish thing." That is the true answer to "Fifty Million Frenchmen can't be wrong.'

I am not sure that public speaking can be taught, but I am sure that it is worth making the effort through a book like this.

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*How We Drafted Adlai Stevenson,* by Walter Johnson. Alfred A. Knopf. 172 pp. $2.75.

*Reviewed by* JOSEPH L. NELLIS

I opened this book determined to read it with impartiality and with no predilections one way or another. I was in Chicago during the 1952 Democratic Convention in the interests of Mr. Stevenson's chief rival for the nomination. So it was with this feeling of determination to be open minded that I sat down to read Professor Johnson's book. I must say, however, that soon after reading it I began to wonder whether Professor Johnson and I had attended the same Convention at the same place in the same year.

At the outset it should be noted that from many standpoints this is a very valuable book.

Although there is probably nothing related in it that has not appeared in the press from time to time I do not recall seeing a similar publication which presents a chronological account of what happens when amateurs get into politics. Professor Johnson is an eminent historian, and it is a great contribution to our knowledge of public affairs when a historian writes a personal account of his experience in the contemporary political arena. Although Professor Johnson is a professional historian, he clearly asserts his amateur position as a politician. His intriguing book brings to life the many admirable qualities of Mr. Stevenson which endeared him to so many independents, Republicans and Democrats alike in that presidential year. But I must say immediately that while Mr. Stevenson was "selected" in 1952 he was not "drafted" in any real sense of the word. In the first place, if all of Mr. Stevenson's statements on the subject of his prospective acceptance of the nomination were put together, they would fairly show that he never flatly rejected the thought of accepting. He made many statements about his reluctance to do so, but at no time did he say finally that he would not accept if nominated, or serve, if elected. We therefore had a candidate who proclaimed himself reluctant but not *absolutely, positively* beyond reach. This, as to Mr. Stevenson, is the touchstone of the professional rather than the amateur attitude toward the political realities of 1952. What Professor Johnson's exceptionally able group of amateurs (and I am proud of them because I was also an amateur at Chicago) did was to keep the fuel pouring on the spark until a conflagration naturally resulted. This political fire had much outside help. I am not sure anyone in the Illinois delegation took a serious view of Mr. Stevenson's expressed reluctance, surely not after his speech to the Convention on its opening day and the demonstration which followed. What I have said about Mr. Stevenson's ultimate availability is proven by Professor Johnson's reply (Page 93) to James Finnegan of Pennsylvania, a professional who sought reassurance,

"Furthermore, believing him (Stevenson) to be a man of good conscience, we know that if the Convention were to choose him, as has been forecast far enough in the past, he has command of language excellent enough to have said long ago that he would not accept—this to forestall embarrassment to anyone who may honestly and conscientiously work for his nomination. It is not in the nature of his integrity to permit such a thing to occur."

Which brings me to an important point. Surely Professor Johnson would be the first to admit that a genuine draft involves more than the nomination of a reluctant candidate. It would probably never occur that way, but if a nominee refused to accept, in clear and unmistakeable language, and the Convention nominated him anyway, there would occur the closest thing to a "draft" we could have.

A Convention "draft" implies, to me at least, the full availability of all Convention facilities to all candidates. This would surely be true if the "drafted" candidate's supporters were not concerned about the strength of the other candidates. As Professor Johnson makes evident, neither he nor his group had any real doubt of Mr. Stevenson's ultimate success as a "draftee." From my experience on the floor of the Convention, I can say that a number of state delegations felt no doubt as to the outcome. Why then, if the draft was genuine, were so many obstacles of every sort and description put into the paths of the opposing contenders? I could mention such things as the lack of proper badges for floor workers, inaccessibility of Convention officials, non-recognition of delegates (one famous case of non-recognition almost lost his voice in the process), refusal to take up legitimate minority reports from committee, and many others. I can't condense my own experience into a few sentences but the earmark of impartiality so necessary to the case for the draft was wholly missing in Chicago that hot week of July, 1952.

The book will be fascinating to those who have never attended a political convention, the thesis of the "draft" notwithstanding. I think if Mr. Truman (who, I believe, in reality, from the White House accomplished the draft of Governor Stevenson months before the Convention, and, personally at Chicago presided over the draft) has the time to read this book, he will be vastly amused and, no doubt, greatly intrigued by this historian's account of how these amateurs accomplished the draft of Mr. Stevenson.

## SORROW

The Decalogue Society of Lawyers announces with deep regret the death of

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## NEW BOOKS

Bigelow, S. T. *Legal etiquette and court-room decorum.* Toronto, Carswell, 1955. 140 p. $4.75.

Brown, R. A. *Personal property.* 2d ed. Chicago, Callaghan, 1955. 951 p. $12.00. (Student's ed., $9.75)

Chenery, W. L. *Freedom of the press.* N. Y., Harcourt, 1955. 256 p. $3.75.

Doroghi, Ervin. *Grounds for divorce in European countries.* N. Y. (66 Fifth Ave.), Research Division of the New School for Social Research, 1955. 51 p. $1.50.

Fine, Benjamin. 1,000,000 *delinquents.* Cleveland, World Pub. Co., 1955. 377 p. $4.00.

Ginzberg, Louis. *On Jewish law and lore.* Phila. (222 N. 15th St.), Jewish Pubn. Soc. of America, 1955. 260 p. $3.50.

Haight, Anne. *Banned books: informal notes on some books banned for various reasons at various times and in various places.* 2d ed. rev. and enl. N. Y., R. R. Bowker, 1955. 172 p. $4.00.

*Illinois law and practice.* Vol. 11. Brooklyn, American Law Book Co., 1955.

Jackson, F. H. *Simeon Eben Baldwin: lawyer, social scientist, statesman.* N. Y., Columbia Univ. Press, 1955. 291 p. $5.00.

Mankiewicz, D. M. *Trial.* N. Y., Harper, 1955. 306 p. $3.50. (A novel)

Radin, Max. *Law dictionary.* N. Y.. Oceana, 1955. 416 p. $8.00.

Rollison, W. D. *Illinois estate planning and drafting of wills and trusts.* 1955 pocket part. Albany, Bender, 1955.

Rosenblum, V. G. *Law as a political instrument.* N. Y., Doubleday, 1955. 88 p. $0.95.

Scott, C. C. *Photographic evidence.* 1955 pocket part. Kansas City, Vernon Law Book Co., 1955. $6.00.

## Join the Great Books Discussion Group

On the evening of September 12, 1955, at the Society's headquarters in Room 303, 180 West Washington Street, the Great Books discussion group, sponsored by our Society, began its third year of discussions of those books and authors whose ideas are the intellectual basis of Western civilization.

There is no pre-requisite of previous formal education. The group consists of lawyers, their wives, business people, artisans and others, from every walk of life. Participation for the first time is no handicap, because each subject is independent of prior discussions.

The group meets every other Monday at 6:15 and the sessions last two hours, leaving the participants more time for further activities for the remainder of the evening. The assignments are brief and the meetings stimulating. The discussions are led by Board member Alec E. Weinrob and Past President Oscar M. Nudelman.

There are 16 sessions in all. Among the subjects to be discussed in the 15 remaining sessions are books by Shakespeare, Locke, Freud, Dostoyevsky, Plato, Aristotle, Voltaire, Rousseau, Rabelais, Aeschylus and Calvin.

Members, their families and friends, are urged to join the Decalogue Society Great Books group. Those interested are invited to telephone Alec Weinrob at FRanklin 2-7266 or Oscar Nudelman at FRanklin 2-1266 for the date of next meeting and name of the book to be discussed. Attendance at all meetings is free.